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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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SILVY ANNA MURPHY 100 TURNBERRY LANE CARY, NC 27518			EXAMINER SERRAO, RANODHI N	
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			2141	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,507	<b>Applicant(s)</b> NICHOLS ET AL.	
	<b>Examiner</b> RANODHI N. SERRAO	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1, 3, 4, 7-10 have been considered but are moot in view of the new ground(s) of rejection.

2. The applicant argued in substance the newly added limitations of claims 1, 3, 4, 7-10. However, the new grounds teach these and the added features. See rejections below.

3. Applicant stated on page 12 of the remarks,

*Accordingly, Applicants contend that the replication program for updating parameters embodied in the computer readable medium is statutory subject matter under 35 U. S. C. § 101 and, thus, Applicants respectfully request withdrawal of the 35 U. S. C. §101 rejection with respect to claims 8 and Applicants respectfully request reconsideration of the presently amended claim 8.*

4. The examiner respectfully disagrees. Claim 8 does not recite any hardware component such as a storage medium, processor, memory, cpu, computer, etc.

Therefore the claim is still non-statutory.

5. Applicant furthermore stated on page 17 of the remarks,

*In particular, the presently amended claims 5 and 6 which depend on base claim 1 specifically claim identifying a specific parameter on a recipient console which parameter is to be updated (and not verified) by a specific donor console, the rejection of claims 5 and 6 under 35 U. S. C. §103(a) as being unpatentable over Cheng et al. (2003/0046676) and Cohen et al. (U.S. Patent 7,051,091) and further in view of Carroll et al. (2003/0097211) should be withdrawn and Applicants respectfully request reconsideration of the presently amended claims 5-6.*

6. The examiner points out that these arguments are irrelevant to the current amendments since claims 5 and 6 have been cancelled.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1, 4, 8, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 1 recites the limitation, “one or more respective servers” multiple times in lines 5, 7, 8, and 10. It is unclear whether the later recitations refer back to the first or not.

10. Claim 4 recites the limitations, “a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console” multiple times in reference to a first and second parameter. It is unclear whether these parameters comprise of the same elements or different ones.

11. Claims 8 and 10 recite similar limitations as to the claims mentioned above and therefore are rejected under the same rationale.

***Claim Rejections - 35 USC § 101***

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12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claim 8 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim does not recite any hardware component such as a storage medium, processor, memory, cpu, computer, etc. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. The claimed invention as a whole must be useful and accomplish a practical application. That is, it must produce a “useful, concrete and tangible result.” State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of “real world” value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96 (1966)); In re Fisher, 421 F.3d 1365, 76 USPQ2d 1225 (Fed. Cir. 2005); In re Ziegler, 992 F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

***Claim Rejections - 35 USC § 103***

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 1, 3, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. (2003/0046676) and Vincent (2004/0015953).

16. As per claim 1, Cheng et al. teaches a method for updating first and second parameters of a recipient control console from first and second donor control consoles (see Cheng et al., ¶ 15), said method comprising the steps of: said recipient control console registering with said first donor control console to receive notification when said first donor control console has an update to said first parameter; said recipient control console registering with said second donor control console to receive notification when said second donor control console has an update to said second parameter (see Cheng et al., ¶ 54-55); after the step of registering said recipient control console with said first donor control console, said recipient control console receiving said notification from said first donor control console and updating said first parameter from said first donor control console accordingly; and after the step of registering said recipient control console with said second donor control console, said recipient control console receiving said notification from said second donor control console and updating said second parameter from said second donor control console accordingly (see Cheng et al., ¶ 131-139). But fails to teach server control consoles; providing said recipient server control console having a parameter replication program installed thereon for controlling one or more respective servers coupled to said recipient server control console, providing a first donor server control console having said parameter replication program installed thereon for controlling one or more respective servers coupled to said first donor server control console and providing a second donor server control console having said

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parameter replication program installed thereon for controlling one or more respective servers coupled to said second donor server control console, said parameter replication program including a parameter replication recipient program and a parameter replication donor program; selecting, by said recipient server control console, said first and second parameters to be updated; identifying a first parameter to be updated by said first donor server control console and identifying a second parameter to be updated by said second donor server control console. However, Vincent teaches server control consoles (see Vincent, ¶ 40); providing said recipient server control console having a parameter replication program installed thereon for controlling one or more respective servers coupled to said recipient server control console (see Vincent, ¶ 46), providing a first donor server control console having said parameter replication program installed thereon for controlling one or more respective servers coupled to said first donor server control console (see Vincent, ¶ 50) and providing a second donor server control console having said parameter replication program installed thereon for controlling one or more respective servers coupled to said second donor server control console (see Vincent, ¶ 51), said parameter replication program including a parameter replication recipient program and a parameter replication donor program (see Vincent, ¶ 63); selecting, by said recipient server control console, said first and second parameters to be updated (see Vincent, ¶ 56); identifying a first parameter to be updated by said first donor server control console and identifying a second parameter to be updated by said second donor server control console (see Vincent, ¶ 60). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Cheng et al. to server

control consoles; providing said recipient server control console having a parameter replication program installed thereon for controlling one or more respective servers coupled to said recipient server control console, providing a first donor server control console having said parameter replication program installed thereon for controlling one or more respective servers coupled to said first donor server control console and providing a second donor server control console having said parameter replication program installed thereon for controlling one or more respective servers coupled to said second donor server control console, said parameter replication program including a parameter replication recipient program and a parameter replication donor program; selecting, by said recipient server control console, said first and second parameters to be updated; identifying a first parameter to be updated by said first donor server control console and identifying a second parameter to be updated by said second donor server control console in order to automatically update software components on a computer and enable computer users to obtain incremental software updates as the upgraded software becomes available (see Vincent, ¶ 13).

17. As per claim 3, the above-mentioned motivation of claim 1 applies fully in order to combine Cheng et al. and Vincent. Cheng et al. and Vincent teach the mentioned limitations of claim 1 above and furthermore Cheng et al. teaches a method further comprising a second recipient control console which registers with said first donor control console to receive notification when said first donor control console has an update to said first parameter, after the step of registering said second recipient control console with said first donor control console, said second recipient control console



receiving said notification from said first donor control console and updating said first parameter from said first donor control console accordingly (see Cheng et al., ¶ 44).

And Vincent teaches server control consoles (see Vincent, ¶ 40).

18. As per claim 9, Cheng et al. teaches a system for updating a first parameter and a second parameter of a recipient control console from a first donor control console and a second donor server control console (see Cheng et al., ¶ 15), said system comprising: a program for registering with said first donor control console to receive notification when said first donor control console has an update to a first parameter and for registering with said second donor control console to receive notification when said second donor control console has an update to a second parameter, said recipient control console having a central processing unit for executing said parameter replication recipient program installed thereon (see Cheng et al., ¶ 54-55); wherein, after registering said recipient control console with said first donor control console, said program installed on said recipient control console receives, said notification from said first donor control console and updating updates said first parameter of said recipient control console and wherein, after registering said recipient control console with said second donor control console, said program installed on said recipient control console receives said notification from said second donor control console and updates said second parameter of said recipient control console (see Cheng et al., ¶ 131-139). But fails to teach server control consoles; a parameter replication donor program installed on each of said first donor server control console and said second donor server control console for providing updates to said first and second parameters, each of said first

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donor server control console and said second donor server control console having a respective central processing unit for executing said parameter replication donor program installed thereon; a parameter replication recipient program installed on said recipient server control console. However, Vincent teaches server control consoles (see Vincent, ¶ 40); a parameter replication donor program installed on each of said first donor server control console and said second donor server control console for providing updates to said first and second parameters (see Vincent, ¶ 46), each of said first donor server control console and said second donor server control console having a respective central processing unit for executing said parameter replication donor program installed thereon (see Vincent, ¶ 50); a parameter replication recipient program installed on said recipient server control console (see Vincent, ¶ 63). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Cheng et al. to server control consoles; a parameter replication donor program installed on each of said first donor server control console and said second donor server control console for providing updates to said first and second parameters, each of said first donor server control console and said second donor server control console having a respective central processing unit for executing said parameter replication donor program installed thereon; a parameter replication recipient program installed on said recipient server control console in order to in order to automatically update software components on a computer and enable computer users to obtain incremental software updates as the upgraded software becomes available (see Vincent, ¶ 13).

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19. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. and Vincent as applied to claim 1 above, and further in view of Rune (6,304,913). Cheng et al. and Vincent teach the mentioned limitations of claim 1 above but fail to teach a method, wherein said first parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console, and wherein said second parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console. However, Rune teaches a method, wherein said first parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console, and wherein said second parameter comprises at least one of: a user ID, an authorization for said user ID, a

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password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console (see Rune, col. 3, line 65-col. 4, line 17). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Cheng et al. to a method, wherein said first parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console, and wherein said second parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console in order to improve response times by automatically selecting for use a server (e.g., mirror server or alternative server) located relatively close to a requesting host. More specifically, the Internet system can operate to select the closest server from a plurality of servers providing the same service (e.g., mirror servers) or slightly adapted variants of the same

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service (e.g., alternative servers) each assigned a common host name and a unique Internet Protocol address (see Rune, col. 1, line 54-col. 2, line 6).

20. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al., Vincent, and Rune. Cheng et al., Rune, and Vincent teach a method further comprising the steps of: said recipient server control console requesting said update to said first parameter from said first donor server control console after the step of said recipient server control console receiving said notification from said first donor server control console of said update to said first parameter, and before the step of said recipient server control console updating said first parameter from said first donor server control console accordingly (see Vincent, ¶ 51); and said recipient server control console requesting said update to said second parameter from said second donor server control console after the step of said recipient server control console receiving said notification from said second donor server control console of said update to said second parameter, and before the step of said recipient server control console updating said second parameter from said second donor server control console accordingly (see Vincent, ¶ 52).

21. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. and Rune (6,304,913). Cheng et al. teaches a computer program product for updating a first parameter and a second parameter of a recipient control console from a first donor control console and a second donor control console, said computer program

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product comprising (see Cheng et al., ¶ 15): a computer readable medium; first program instructions to instruct said recipient control console to register with said first donor control console to receive notification when said first donor control console has an update to said first parameter; second program instructions to instruct said recipient control console to register with said second donor control console to receive notification when said second donor control console has an update to said second parameter (see Cheng et al., ¶ 54-55); third program instructions, executed after said first program instructions register said recipient control console with said first donor control console, to instruct said recipient control console to receive said notification from said first donor control console and update said first parameter from said first donor control console accordingly; and fourth program instructions, executed after said second program instructions registers said recipient control console with said second donor control console, to instruct said recipient control console to receive said notification from said second donor control console and update said second parameter from said second donor control console accordingly (see Cheng et al., ¶ 131-139). But fails to teach server control consoles; wherein said first parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console: wherein said second parameter comprises at least one of: a user ID, an authorization for said

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user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console; and wherein said first, second, third and fourth program instructions are recorded on said medium for execution by a computer system for updating said first and second parameters of said recipient server control console. However, Rune teaches server control consoles; wherein said first parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console: wherein said second parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console; and wherein said first, second, third and fourth program instructions are recorded on said medium for execution by a computer system for updating said first and second parameters of said recipient server control console (see Rune, col. 5, lines 39-67). It

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would have been obvious to one having ordinary skill in the art at the time of the invention to modify Cheng et al. to server control consoles; wherein said first parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console: wherein said second parameter comprises at least one of: a user ID, an authorization for said user ID, a password of a server operator, a grouping of servers managed by a server control console, an account information, a default settings for displays, a help desk telephone number for a server control console operator, a language designation for text displayed on a screen, an IP address of a server control console, an IP address of a server managed by said server control console; and wherein said first, second, third and fourth program instructions are recorded on said medium for execution by a computer system for updating said first and second parameters of said recipient server control console in order to improve response times by automatically selecting for use a server (e.g., mirror server or alternative server) located relatively close to a requesting host. More specifically, the Internet system can operate to select the closest server from a plurality of servers providing the same service (e.g., mirror servers) or slightly adapted variants of the same service (e.g., alternative servers) each assigned a common host name and a unique Internet Protocol address (see Rune, col. 1, line 54-col. 2, line 6).



22. Claim 10 has similar limitations as to claim 1 above; therefore, it is being rejected under the same rationale.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ranodhi Serrao whose telephone number is (571)272-7967. The examiner can normally be reached on 8:00-4:30pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571)272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/R. N. S./

Examiner, Art Unit 2141

6/24/2008

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2144